Supreme Court, U.S.
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No. 319

In the

# Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

CHARLES H. MOGULNICKI

Petitioner,

VS.

STATE OF CONNECTICUT,

Respondent.

PETITION ~~FOR~~ WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

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To The Chief Justice Of The United States And The Associate Justices Of The United States Supreme Court:

The Petitioner, Charles H. Mogulnicki, prays that a Writ of Certiorari issue to review the judgment of the Connecticut Supreme Court in the above case.

## OPINION BELOW

The opinion below is reported at CR-9-10023AP and is printed in the appendix to this petition.

## JURISDICTION

The judgment of the court below was entered on July 12, 1968. A timely petition for rehearing was filed and rehearing was denied on April 22, 1970. The jurisdiction of this Court is invoked under the Fourth and Fourteenth Amendments to the Constitution.

## QUESTIONS PRESENTED

1. Whether the warrantless arrest of the defendant was illegal under the Fourth and Fourteenth Amendments to the United States Constitution in that the arresting officer had no "probable cause" for arresting the defendant.

2. Whether the warrantless arrest of the defendant was illegal under the Fourth and Fourteenth Amendments because the arresting officer avoided obtaining an arrest warrant even though he had three days in which to do so.

3. Whether the court committed error in denying the defendant's motion to dismiss, in that it took into consideration in making its determination, evidence seized after the arrest was made.

4. Whether the States Prosecuting Attorney, had the right to characterize the defendant in his argument to the jury, without an objection to the court, that the defendant was a member of a crime syndicate know as the Cosa Nostra or Mafia.

## STATEMENT OF THE CASE

The petitioner was convicted and sentenced on July 12, 1968, and the charge was that of "pool selling" receiving one (1) year jail term suspended after sixty (60) days and a two hundred dollar ($200.00) fine.

Immediately prior to petitioner's trial he filed a motion to dismiss which was denied.

At the hearing in the lower court, the State introduced, without objection, evidence seized after the arrest was made. This evidence was then taken into consideration by the Judge presiding over the hearing, when he denied the defendant's motion to dismiss:

"He goes in and makes an arrest at that time because he feels he has probable cause to as a result of his background investigation, which December 1st was a part of it. He makes an arrest. He finds a man there

with a paper opened to the racing section with a lot of slips in front of him, which he claims to have seen him sorting; which he drops from his hands before he gets there. They are not in his hands before he actually touches him. They correspond. They're betting slips. The paper is open to the section. He has an unusual amount of money in his pocket, certainly an awfully lot of money to be taken to work. The whole thing fits into a pattern. He made an arrest. Now you have a chance to have him found not guilty or guilty at the trial. But the arrest was certainly based upon probable cause and substantiated by what was found." (TR.53-4)

The fact that it is not precisely clear just how much weight the court gave to the evidence seized after the arrest in determining its validity, is of no import. The mere fact that it did take such evidence into consideration, which is clearly reflected from the above excerpt taken from the record, is enough to require this court to set aside the decision on the motion.

## REASONS FOR GRANTING WRIT

Two reasons are presented: (1) That the petitioner was denied due process because the State failed to obtain an arrest warrant; (2) The court denied the defendant due process, because it imposed upon the defendant a malicious trial.

### I.

WHETHER THE DUE PROCESS CLAUSE TO THE FOURTH AMENDMENT, PERMITS THE STATE TO MAKE SEARCHES AND SEIZURES WITHOUT AN ARREST WARRANT FOR A MISDEMEANOR.

Trooper Keller, testimony in the trial court transcript, clearly shows that he searched the defendant's person without first obtaining a warrant. (TR-27-30)

It's further testified to Motion to Dismiss.

1. The defendant had been placed under arrest by Trooper Keller prior to the moment when he scooped up the newspaper and the slips of paper. (Tr.33)
2. Trooper Keller did not know what was on any of the slips of paper which were handed to the defendant by any of the persons on December 1 and December 4, 1967, (Tr. 35;42) and he observed no money being given to the defendant on December 4, 1967. (Tr. 40)
3. When Trooper Keller observed the defendant make the telephone calls on December 1, 1967, he was approximately twenty feet away from the telephone booth. (Tr. 35) The defendant closed the telephone booth door when he went in and Trooper Keller had no knowledge of whom he was talking to. (Tr. 36)
4. Trooper Keller never inquired whether the bench where the defendant was seated when he was arrested was assigned to the defendant. (Tr.40) To the best of his knowledge, the bench could have been used by the six or seven people who were standing around it. (Tr. 40)

Thus, the testimony here clearly shows that Trooper Keller, had no probably cause to arrest the defendant without a warrant.

State v Kehlenbach, 4 Conn, Cir 367, 381 (1967)
State v Spellman, 156 Conn. 65 (1965)
Henry v United States, 361 U.S. 98, 103 (1959)
Wong v United States 371 U.S. 471, 479 (1963)
Johnson v United States 333 U. S. 10 (1948)
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## CONCLUSION

For the reasons given it is respectfully submitted that the decision of the Connecticut Supreme Court should be reversed upon a granting of certiorari here in and the said relief is hereby prayed for.

Charles H. Mogulnicki
Pro-se Attorney for Petitioner

APPENDIX

Charles H. Mogulnicki, Appellant,

V

State of Connecticut, Appellee.

No. CR 9-10023AP

Supreme Court of Connecticut.

April 22, 1970

Alcorn, Judge

The petition by the defendant for certification for appeal from the Appellate Division of the Circuit Court is denied.

By the Court,

Alcorn.